IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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C.R NO. 4997 OF 2003

Date of decision : September 27, 2006

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Neelam Ahuja .....Petitioner

Vs.

Mrs. Pinki Manchanda & others .....Respondents

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CORAM: HON'BLE MR. JUSTICE H.S BHALLA

Present: Mr. Hemant Saini, Advocate for the petitioner(s).
Mr. A.K Chopra, Sr. Advocate with Mr. N.D Kalra, Advocate for respondent no.1.

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H.S BHALLA, J.

This revision petition is the outcome of the order dated October 6, 2003 passed by Civil Judge, Junior Division, Pathankot by virtue of which an application moved by Neelam Ahuja hereinafter referred to as the petitioner-applicant under order 1 Rule 10 CPC for impleading her as a party in the suit titled as “Mrs. Pinky Manchanda and another Vs. Ashwani Manchanda” was dismissed.

Aggrieved against this order, she had no other option but to knock the door of this Court by filing a revision petition.

The other facts required to be noticed for the disposal of this petition are that petitioner through an application before the learned Lower Court disclosed that she has filed a suit for declaration to the effect that she is the owner of the suit property to the extent of 1/3rd share. This suit is pending in the Court. The suit for partition of suit property filed by Pinky Manchanda which is pending before the Court and in fact she is not the owner of the same and she has willfully not impleaded her as a party in the suit. And the petitioners required to be heard in the suit filed by Pinky Manchanda for appropriate adjudication of the matter in controversy as she has direct interest in the suit property and in case she is not allowed to implead party in the present case, her interest shall be prejudiced and it will cause injustice to her.

On the other hand, the application filed by the present petitioner before the learned lower Court for becoming party in the suit mentioned above was contested by pleading through the written statement that one suit filed by the petitioner is pending and she has no right/interest with respect to the suit property and in fact she has filed a false suit and the answering respondents have not concealed any facts from the Court. In the final analysis, it was prayed that present petitioner is not necessary party to the suit and there is no reason to implead her and they prayed for the dismissal of the application.

I have heard the counsel on either side and have gone through the record. It is an admitted case of the parties that a suit for partition and permanent injunction pertaining to the suit property is pending in the Court,

wherein it has been categorically pleaded by Neelam Ahuja that after the demise of Radha Krishan on 12/6/1983, Narinder Kumar Manchanda inherited his estate as the full owner and similarly Ishar Devi wife of Radha Krishan executed a will dated 22.9.1978 of her property in favour of another grand son Ashawni Kumar Manchanda, who is defendant In the suit. It is further pointed out that after the death of Ishar Devi on 3/2/1982, defendant of that suit became owner of the suit property. It has also been pleaded by the defendants that after the death of both Radha Krishan and Ishar Devi both Narinder Kumar Manchanda and Ashwni Kumar Manchanda have become the owners of the respective property and they also got sanctioned a siteplan from Municipal Council, Panckula in 1993 and thereafter the building was raised. Narinder Kumar Manchanda died on 8/1/1997 and the present plaintiff Pinky Manchanda and her minor daughter inherited his estate and became owner to the extent of 1/3rd share in the property in dispute. It is again admitted case that the present plaintiff and the defendant both have jointly sold some shops out of the suit property.

In view of the facts mentioned above, it is crystal clear that the defendants in their pleadings have nowhere alleged that the present petitioner has 1/3rd share in the property in dispute and moreover as per the case of the petitioner, she has filed a separate suit claiming 1/3rd share in the property in question, therefore, to my mind, the right of the present petitioner can be decided in a suit filed by her relatives pending before the Court, moreover, no party can be compelled to contest against a particular party against whom the party does not desire to contest. At the cost of repetition, I would again like to observe that since a separate suit had been filed by the present petitioner claiming right of ownership to the extent of

her share as pleaded by her in that suit then her rights can be determined by the Court separately and she is not a necessary party in the suit filed by the plaintiff-respondent. Moreover, it is well-settled that revisional jurisdiction is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is manifest error on the point of law which consequently resulted in flagrant miscarriage of justice. Learned counsel for the petitioner has not brought to my notice any glaring defect in the procedure adopted by the Lower Court or that there was manifest error on the point of law in the order passed by the learned Lower Court.

In view of the foregoing discussion, I am of the view that no interference is called for in the order of the learned lower Court by virtue of which the application filed by the present petitioner under Order 1 Rule 10 was dismissed.

In the net result, present revision petition fails and the same is hereby dismissed.

Before parting with this order, it is made clear that the observations contained in this order shall have no bearing on the ultimate decision of the suits pending before the learned lower Courts.

September 27, 2006 **(H.S BHALLA)**
ritu JUDGE